

## **32 KAR 2:040. Preconciliation procedures.**

RELATES TO: KRS 121.120, 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish a procedure for processing complaints or internally-generated matters prior to the conciliation process established by Acts 1992, Chapter 288, Section 46 enacted by the General Assembly. The bill became effective July 14, 1992, and it is necessary to promulgate this administrative regulation to enable the registry to comply with the new provision.

Section 1. Reason to Believe Finding. (1) If the general counsel, either after reviewing a complaint and a respondent's letter or memorandum requesting that the registry take no action on the complaint as provided in Section 3 of 32 KAR 2:030, or after reviewing an internally-generated matter as described in Section 5 of 32 KAR 2:030, determines there is reason to believe that a respondent may have violated or is about to violate a campaign finance statute or administrative regulation, he shall notify the respondent and complainant of his finding by letter, setting forth the sections of the statute or administrative regulation alleged to have been violated and the factual basis supporting the finding.

(2) If the general counsel finds no reason to believe that a violation occurred or otherwise terminates its proceedings, the general counsel shall so advise both the complainant and respondent by letter.

Section 2. Investigations. (1) An investigation shall be conducted in any case in which the general counsel finds reason to believe that a violation of a campaign finance statute or administrative regulation may have occurred or is about to occur, or at the direction of the registry if the general counsel's recommendation of dismissal is rejected.

(2) In its investigation, the registry may utilize the provisions of Sections 3 to 7 of this administrative regulation. The investigation may include field investigations, audits, and other methods of information gathering.

Section 3. Written Question Under Oath. The registry may authorize its chairman or general counsel to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which the answers shall be submitted.

Section 4. Subpoenas; Depositions. (1) The registry may authorize its chairman or general counsel to issue subpoenas requiring the attendance and testimony of any person by deposition or at a hearing. Further the registry may issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with an investigation, deposition, or a hearing.

(2) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be given under oath. A deposition may be taken before any person having the power to administer oaths.

(3) The Kentucky Rules of Civil Procedure, Rule 30.05, shall govern the opportunity to review and sign depositions taken pursuant to this section.

Section 5. Service of Subpoenas, Orders, and Notifications. (1) Service of a subpoena, order, or notification upon a person named therein shall be made by delivering a copy to that person in the manner prescribed by this section. In the case of subpoenas, fees for one (1) day's attendance and mileage shall be tendered as specified in Section 6 of this administrative regulation.

(2) When service is to be made upon a person who has advised the registry of representation by an attorney, the service shall be made upon the attorney by any of the methods specified in subsection (3) of this section and a copy shall be sent to the individual.

(3)(a) Delivery of subpoenas, orders, and notifications to a natural person may be made by:

1. Handing a copy to the person;
2. Leaving a copy at his dwelling place or usual place of abode with a person of suitable age and discretion residing therein;
3. Mailing a copy by registered or certified mail to his last known address; or
4. Any other method whereby actual notice is given.

(b) When the person to be served is not a natural person, delivery of subpoenas, orders, and notifications may be made by:

1. Mailing a copy by registered or certified mail to the person at its place of business;
  2. Handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of the person;
  3. Mailing a copy by registered or certified mail to the representative at his last known address;
- or
4. Any other method by which actual notice is given.

Section 6. Witness Fees and Mileage. Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the Commonwealth of Kentucky. These fees may be tendered at the time the witness appears for the deposition or within a reasonable time thereafter.

Section 7. Motions to Quash or Modify a Subpoena. (1) A person to whom a subpoena is directed may, prior to the time specified therein for compliance, but no later than five (5) days after the date of receipt of the subpoena, move the registry to quash or modify the subpoena, accompanying the motion with a brief statement of the reasons therefore. Motions to quash shall be filed with the general counsel, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Three (3) copies shall be submitted.

(2) The registry may deny the motion, quash the subpoena, or modify the subpoena.

(3) The person subpoenaed and the general counsel may agree to change the date, time, or place of a deposition or the conditions for the production of documents without affecting the force and effect of the subpoena, but any modifications shall be confirmed in writing.

Section 8. Briefing Procedures. (1)(a) Upon completion of the investigation, the general counsel shall make a report of the findings of the registry.

(b) If the registry determines that the information obtained in the course of the investigation is insufficient to support a finding of probable cause or to provide a basis for dismissal of the action, it may direct the general counsel to prepare a brief setting forth his position on the alleged factual and legal issues of the case.

(c) The registry may also request the respondent to appear to present additional information, or the respondent may request that he be allowed to present additional evidence.

(d) The decision as to whether the respondent may present additional evidence shall be within the discretion of the registry.

(2) The general counsel shall provide a copy of his brief to the respondent who may, within fifteen (15) days of receipt of the general counsel's brief, file a brief with the registry setting forth his position on the factual and legal issues of the case. Ten (10) copies of the brief shall be filed with the executive director and three (3) copies shall be filed with the general counsel.

Section 9. Probable Cause Finding; Notification. (1) If the registry determines that there is probable cause to believe that a respondent may have or is about to violate a campaign finance statute or administrative regulation, the general counsel shall notify the respondent and complainant by letter.

(2) If the registry finds no probable cause or otherwise orders a termination of its proceedings, the general counsel shall notify respondent and complainant by letter.

Section 10. Noncompliance with Reporting Requirements; Probable Cause Determination. (1) If any person subject to the provisions of KRS 121.180 fails to comply with any reporting requirement contained in that section, the failure to file a report due in a timely manner shall constitute prima facie evidence that probable cause exists to believe that a violation has occurred and the general counsel and executive director may immediately enter into conciliation negotiations with the respondent. The notice required by KRS 121.140(2) shall be issued when the registry's staff concludes that there has been a failure to file any report required under the campaign finance laws.

(2) A conciliation agreement pertaining to a violation of KRS 121.180 shall not be binding upon either party until it is signed by the respondent, the general counsel and the executive director, and approved by the registry. (19 Ky.R. 1234; Am. 1526; eff. 1-4-93.)